

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA
MUSKOGEE DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL ACTION NO.
)	
v.)	6:21-CR-198-RAW
)	
JIMMY NACE)	
_____)	

MOTION IN LIMINE TO EXCLUDE CHARACTER EVIDENCE:

EVIDENCE OF PRIOR CONVICTION

COMES NOW Defendant, JIMMY NACE, by and through undersigned counsel, and moves to exclude improper character evidence, including evidence of prior convictions and evidence of substance abuse. Mr. Nace makes this motion pursuant to Federal Rules of Evidence 401 - 404, and the Due Process Clause of the 5th Amendment. For cause, he shows as follows:

Mr. Nace is charged in a two-defendant, single-count superseding indictment with the murder of Bobby Dalpoas. The indictment alleges,

On or about July 3, 2019, within the Eastern District of Oklahoma, in Indian Country, the defendants, JIMMY HOLMES NACE, a non-Indian, and MATTHEW JENNINGS VERMILLION, a non-Indian, willfully, deliberately, maliciously, and with premeditation and malice aforethought, did unlawfully kill Bobby Joe Dalpoas, an Indian, in violation of Title 18, United States Code, Sections 1111(a), 1151, 1152, and 2.

(Doc. 74). To this indictment, Mr. Nace has entered a plea of not guilty. (Doc. 87).

In addition, Mr. Nace's co-defendant, Matthew Vermillion, entered a plea of guilty on January 20, 2022 (Doc. 90). As a result, Mr. Vermillion has been removed from the trial scheduled on March 1, 2022. (Doc. 94).

After reviewing discovery that the government provided in Mr. Nace's case, one or more witnesses could provide testimony that is contrary to the rules of evidence, including evidence of suspected substance abuse by Mr. Nace as well as crimes Mr. Nace committed, unrelated to the instant case. As a result, Counsel for Mr. Nace ask the Court to issue an order directing the government to instruct their witnesses not to testify about Mr. Nace's criminal history or his perceived prior substance abuse.

According to the rules of evidence, evidence of Mr. Nace's prior criminal activity is inadmissible without an approved reason.

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

FRE 404(a)(1). "Such evidence is not admissible 'to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.'" *United States v. Watson*, 766 F.3d 1219 (10th Cir. 2014).

As the Court is aware, there are methods of admitting other crimes, wrongs, or acts. F.R.E. 404(b). According to 404(b),

This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

F.R.E. 404(b)(2). After conferring with counsel from the government, the government currently does not intend to introduce 404(b) evidence in its case in chief.

Counsel requests that the Court order the government to direct their witnesses to refrain from mentioning Mr. Nace's prior criminal history or his suspected substance abuse. This evidence is simple inadmissible character evidence without an approved reason for admission.

Counsel has conferred with Counsel for the government. The government does not intend to illicit any improper or inadmissible evidence or testimony under 404 or 609 during its case in chief. However, the government may seek admission of 404 and 609 evidence or testimony if Mr. Nace testifies, the defense opens the door, or in rebuttal.

Dated: This 24th day of January, 2022.

Respectfully submitted,

J. Wesley Bryant
J. WESLEY BRYANT
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Suppress Statements has been formatted in Times New Roman 14 point, in accordance with Local Rule 5.1B, and was electronically filed this day with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following counsel of record:

T. Cameron McEwen
Assistant United States Attorney
Eastern District of Oklahoma
520 Denison Ave
Muskogee, OK 74401

Dated: This 24th day of January, 2021.

/s/ J. Wesley Bryant
J. WESLEY BRYANT
Georgia Bar No. 091621
Attorney for Mr. Nace